

OPINION: James Comey's Fair Weather Friends

By Jim Walden, Walden Macht & Haran LLP

Law360, New York (November 7, 2016, 2:58 PM EST) --

In the scrum of American politics, what a difference a few months can make. It recalls the old adage, "Today you are a hero, tomorrow you are a goat." FBI Director James Comey is the latest casualty.

This July, when Director Comey announced, after the FBI's investigation into the Clinton emails, that "no reasonable prosecutor" would bring a case against Secretary Clinton, Andrew Rosenthal of the New York Times applauded the FBI's handling of the probe as "appropriate[]." Joan Walsh of the Nation suggested that Comey had delivered a valuable lesson to Clinton, and that Clinton should "reckon with Comey's words." Dana Milbank of the Washington Post defended Comey's integrity, and criticized Republicans for attempting to "impugn the character of a model public servant." The Washington Post's editorial board criticized the collective Republican "attack [on] Mr. Comey for doing his job."



Jim Walden

Fast-forward to Oct. 31, 2016 — less than four months later — after Comey determined that he needed to send a letter to Congress, indicating that the FBI was in possession of newly discovered emails pertaining to the Clinton investigation. At first, the criticisms of Comey were somewhat muted and benign, undoubtedly because someone other than he leaked the letter. But, after Democrats realized that calling-out Comey was resonating with its base, they saw the opportunity to score more political points by delivering the sharp end of the stick to Comey, with the media leading the vanguard.

Thus, the same Andrew Rosenthal who commended Comey in July now accused him of "self-righteous meddling" in the election, expressing his uninformed belief that Comey "set out to interfere in the campaign on behalf of the Republican Party." Joan Walsh, a defender of Comey's judgment and actions earlier, accused Comey of "dangerous cowardice." Dana Milbank, the defender of Comey's integrity, now characterized Comey as "squirrely" and intimated that his decision was based on "self-preservation." The Washington Post's editorial board assailed Comey for having gone "too far" in an "attempt to appease Republicans."

And, in a crescendo moment, 100 former federal prosecutors signed on to a highly publicized letter in criticism of Comey, declaring that his actions left them all "astonished and perplexed."

This letter was not a spontaneous reaction by a group of colleagues and friends to an issue of shared concern. This "group" was a creation. Of whom? Hillary Clinton's campaign. How do I know this? I was

asked to sign the letter — an invitation I refused. The invitation was quite plainly worded: “Jim, I remember you as a strong law and order Democrat. On behalf of the Hillary Clinton campaign, would you be interested in signing a letter of former AUSAs [short for Assistant U.S. Attorneys] about Director Comey’s letter to Congress coming so close to the election?” [Note: this invitation did not ask if, in fact, I was astonished or perplexed].

So, quite obviously, this hornet’s nest was conjured, not stirred, as part of a political campaign. As a voter registered neither as a Democrat nor a Republican (my former colleague’s recollection was dated), I can say with great confidence that this sort of ridiculous finger-wagging against a career public servant — meant to score points with a political base, and without any true understanding of Comey’s decision — is precisely what middle-of-the-road Americans detest about politics and politicians. One cannot believe anything because everything is done for the win, not with a true sense of understanding and purpose.

Why do I say this so emphatically in the context of the Clinton campaign’s letter, to which these former officials signed on? I do not know, obviously, who penned it. But, those who signed it should have known — for at least four reasons — that Comey had little choice but to issue his letter to Congress. First, and most importantly, Congress’ demands of the FBI in the Clinton email investigation imposed a continuing duty on the FBI to cooperate if newly discovered information was discovered. About this, Congress’s document request to the FBI could not be clearer: “This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.” Second, Comey told Congress in his testimony on July 7, 2016, that the Clinton email investigation was completed, a sentiment Secretary Clinton’s campaign firmly latched onto the same day when issuing a press statement: “We are glad that this matter is now resolved.” Had Comey failed to inform Congress the case was reopened, Congress would have justifiably claimed a lack of candor. Third, Comey could not temper his duty of candor to Congress based on the belief that a member might leak the letter; this would have been a total and complete abdication of his duties. Fourth, given the numerous leaks within the FBI itself on the Clinton email investigation, Comey faced the prospect of not reporting about the new email trove, only to have Congress learn about it through such a leak. This very real possibility would have done lasting damage to the FBI, our nation’s top law enforcement agency.

To all my former DOJ colleagues, I ask that we stop ourselves from getting pulled into partisan politics. We may be the last bulwark against the blood sport that epitomizes our political system. And, more importantly, I suggest that we all take a moment to remember that Director Comey is experienced, capable, has consistently shown himself independent of political agendas, has repeatedly shown exceptional judgment, and likely had good reasons for his actions. To those who doubted him, let us remember the importance of asking questions before making judgments of and accusations against so distinguished a public servant.

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Jim Walden is a veteran litigator and partner of Walden Macht & Haran. He served in the U.S. Department of Justice under the Clinton and Bush administrations, and has since represented clients in cases of government corruption, abuse, and over-reaching.

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